

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 4:09-CR-168 CAS
)	
ANTHONY JOHNSON,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

In this closed criminal matter, defendant has filed a Motion to Reduce Sentence Pursuant to 18 U.S.C. § 3582(c)(2) and a Motion to Proceed In Forma Pauperis. For the following reasons, the motions will be denied as moot.

On September 1, 2009, defendant plead guilty to possession with the intent to distribute five grams or more of cocaine base (Crack) (Count I). On November 24, 2009, the Court sentenced defendant to a total term of 60 months imprisonment and four years supervised release.

In his motion, defendant seeks a reduction in his sentence “to reflect changes in the statutory penalties for possession of cocaine base (crack) in relation to powder cocaine from 100-to-1 to 18-to-1.” The Guidelines for crack cocaine were amended effective November 1, 2007. See Sentencing Guidelines Amendment 706, as amended by Sentencing Guidelines Amendment 711. The Sentencing Commission made these amended guidelines retroactive for purposes of Sentencing Guidelines §1B1.10 by Sentencing Guidelines Amendments 711 and 712.

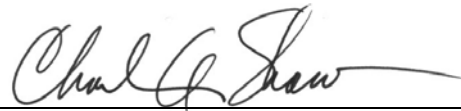
Defendant was sentenced pursuant to the 2008 version of the Guidelines Manual. See Plea Agreement, Doc. 38, at 8. The 2008 version of the Guidelines Manual incorporated the amended Guidelines for crack cocaine that were effective November 1, 2007. Because defendant was

sentenced after the effective date of the amendments to the Sentencing Guidelines using the 2008 version of the Guidelines Manual, he has already been sentenced pursuant to the amended Sentencing Guidelines. He has no need for the amended Sentencing Guidelines to be applied retroactively to him; they have already been applied to him. Therefore his motion is moot. Additionally, defendant does not need to pay any filing fee for the Court to rule on this motion in his closed criminal matter, and therefore his motion to proceed in forma pauperis will be denied as moot.

Accordingly,

IT IS HEREBY ORDERED that defendant's motion for retroactive application of the sentencing guidelines to crack cocaine offense 18 U.S.C. § 3582 is **DENIED as moot**. [Doc. 50]

IT IS FURTHER ORDERED that defendant's motion for leave to proceed in forma pauperis is **DENIED as moot**. [Doc. 51]

A handwritten signature in black ink, appearing to read "Charles A. Shaw", written over a horizontal line.

CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 18th day of January, 2011.